

REMARKS

Applicant and his undersigned attorney had thought that an agreement had been reached at the interview of January 12, 2007, as to the allowance of the claims in this application and were, as can be imagined, disappointed to receive the pending Action, which applies a reading to the claims and Caenen that is unreasonable. Applicant and the undersigned do thank the Examiner for withdrawing Marnay as a reference against the pending claims.

Claims 1, 3 and 4 are once again rejected as anticipated by Caenen. The Examiner's interpretation of Caenen this time is based on an interpretation of the claim term "substantially straight section" that no person skilled in this art would possibly regard as reasonable under any acceptable construction of the term. Accordingly, this rejection is respectfully traversed.

Applicant appreciates the Examiner's candor in explaining by reference to FIGS. 4 and 7 of Caenen how she interprets Caenen as showing substantially straight sections that meet at the claimed included angle. The patent claim term "substantially" has a construction that does not reasonably permit the interpretation the Examiner has apparently adopted here.

Words like "generally" and "substantially" are words of approximation commonly used in patent claims to avoid a strict limitation to the parameter in question. *Anchor Wall Systems, Inc. v. Rockwood Retaining Walls, Inc.*, 340 F.3d 1230 (Fed. Cir. 2003) (holding that "generally parallel" in the context of the patent in suit envisioned some degree of deviation from exactly parallel.). *Deering Precision Instruments, LLC v. Vector Distribution Systems, Inc.*, 347 F.3d 1314 (Fed. Cir. 2003), surveyed the case law construing "substantially" and stated that choosing among the available alternative meanings, "significantly; considerably," "largely; essentially" or as denoting approximation or magnitude, required examination of the intrinsic evidence. In other words, whether "substantially" means "largely" or "essentially" depends on the context involved. In *Deering*, for example, the claim said that a sliding weight had to be "disposed substantially in an imaginary plane containing the fulcrum." The Federal Circuit observed that "substantially" may connote a term of approximation or a term of magnitude, referring to *Epcon*

Gas Systems, Inc. v. Bauer Compressors, Inc.; 279 F.3d 1022, 1031 (Fed. Cir. 2002) (“The phrase ‘substantially constant’ denotes language of approximation, while the phrase ‘substantially below’ signifies language of magnitude, i.e., not insubstantial.”). 347 F.3d at 1323. The court concluded that the term “substantially in an imaginary plane” meant that the weight could not just be at or near the imaginary plane, a not insubstantial portion of the weight had to intersect the plane containing the fulcrum.

Now, if we apply this approach to this application, we see, based on the context of the disclosure of this application, that a “substantially straight section,” even taken in its broadest reasonable meaning, means a section that is largely straight or mostly straight but does not have to be completely straight. The alleged substantially straight sections identified by the Examiner on FIGS. 4 and 7 of Caenen are not straight at all – and no reasonable person skilled in this art would contend otherwise. The Examiner’s implicit interpretation of “substantially straight section” ascribes no meaning whatever to the words “substantially straight.” The sections she identifies in Caenen as corresponding to the claimed substantially straight sections are not straight *in any relevant sense*! Since the Examiner’s interpretation of the words “substantially straight” essentially robs them of all significance, that interpretation cannot be reasonable. Furthermore, as explained previously by applicant, the sections in Caenen the Examiner identifies are not the undercut connection profiles as claimed at all.

With a reasonable, albeit broad, interpretation of “substantially straight section” in hand, it becomes apparent that applicant’s prior arguments of record are correct, and that the rejection of claims 1, 3 and 4 as anticipated by Caenen should be withdrawn. Caenen does not disclose the “substantially straight profile sections” as claimed.

Claims 1, 3 and 4 stand rejected under 35 USC 103(a) on Caenen in view of Heldreth, based on the reasoning that Caenen discloses all of the claimed invention except for the undercut portions that are inclined relative to one another. This rejection is respectfully traversed.

Applicant respectfully notes that if this interpretation of Caenen were correct, the Examiner is admitting that Caenen does not anticipate claims 1, 3 and 4. Furthermore, since Caenen does not provide the teachings for which it is cited as explained above, the basic premise of the rejection fails, and it should be withdrawn.

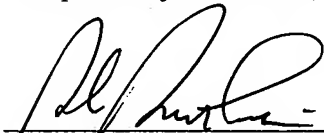
Early action allowing claims 1, 3 and 4 is solicited.

In the event that the transmittal letter is separated from this document and the Patent and Trademark Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing Docket No. 246472005200.

Respectfully submitted,

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